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ATTORNEY FOR DEFENDANT
United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

BRANDY HAMILTON, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	CV 06-141-M-DWM DEFENDANT'S MOTION TO DISMISS
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The United States, by and through counsel, Victoria L. Francis, Assistant United States Attorney, respectfully moves the court pursuant to Fed. R. Civ. P. 12(b)(1) and (6), for an order dismissing plaintiff's amended complaint.

The grounds for this motion are that the statute of limitations under the Federal Tort Claims Act bars the claim set forth in the amended complaint against the United States. This motion is based upon the allegations in the amended complaint on file herein, and the supporting brief filed herewith. The standard of review is clear in a motion to dismiss. For the purposes of the motion, the allegations in the complaint are to be construed in the light most favorable to the plaintiff and its allegations are taken as true. Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure*, Vol. 5B Section 1357, p. 417 (2004). Although the United States denies certain allegations, even if the allegations are taken as true, the complaint is barred by the statute of limitations.

Counsel for plaintiff has been contacted, and he advised that he objects to this motion to dismiss.

DATED this 3rd day of December, 2007.

WILLIAM W. MERCER
United States Attorney

/s/ Victoria L. Francis
VICTORIA L. FRANCIS
Assistant U.S. Attorney
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on the 3rd day of December, 2007, the United States Attorney's Office served copies of the attached document by CM/ECF or first class mail, postage prepaid, as follows:

Addressee(s):

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